

SENATE BILL REPORT

SB 5245

As of February 23, 2009

Title: An act relating to evidence in administrative hearings.

Brief Description: Concerning evidence in administrative hearings.

Sponsors: Senator Carrell.

Brief History:

Committee Activity: Judiciary: 2/04/09, 2/20/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: The Office of Administrative Hearings (OAH) is an independent state agency that employs administrative law judges (ALJ) who are attorneys. These ALJs hear appeals from decisions issued by numerous state agencies. A fact finding hearing is held and the ALJ issues a written decision. A majority of the hearings are conducted by telephone and an audio recording is made of all hearings.

The OAH maintains a website with extensive information regarding the hearing process and the rights and responsibilities of parties. The procedure for obtaining a subpoena from the ALJ informs the person that he or she must be able to explain why the document or witness is necessary and must provide the names and addresses of the witnesses. The ALJ decides whether to grant or deny the subpoena request. RCW 34.05.446 and WAC 10-08-120 authorize the issuance of subpoenas by the presiding officer in an administrative proceeding.

Summary of Bill: The notice that is provided to all parties when an agency or OAH sets the time and place of a hearing must include, among other things, a statement explaining the process for requesting a subpoena for the production of testimony or evidence relevant to the proceeding.

The presiding officer in an administrative proceeding must require each party to disclose any knowledge of the existence of audio or video recordings that may be relevant to the proceeding. The officer may issue a subpoena to obtain the recordings.

Appropriation: None.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Fiscal Note: Requested on February 3, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In administrative hearings, there should be a way to ensure that both parties get their evidence heard. Specifically, if the matter involves audio or visual recordings, those recordings should be part of the process. A citizen was not allowed to show a video of an incident that would have exonerated him. This, in turn, caused financial hardship. These hearings should be a level playing field. This bill will help.

Information is currently given to appellants and claimants with every notice of a hearing explaining how to obtain a subpoena. The OAH website also provides this same information. The bill proposes to do what is already being done by OAH.

Persons Testifying: PRO: Senator Carrell, prime sponsor; James McNellis, citizen; Selvyn Waters, OAH.